In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1771

CURTIS HOWE SPRINGER, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner constructed and operated a forty-room resort or "health spa" on the public domain. The United States brought an action of ejectment against petitioner in the district court and petitioner asserted an allegedly valid mining claim in defense. The Bureau of Land Management of the Department of the Interior contested the validity of petitioner's mining claims. The district court entered a preliminary injunction prohibiting petitioner from using or occupying the mining claim lands other than for legitimate mining purposes (321 F. Supp. 625) and the court of appeals affirmed (478 F. 2d 43).

The Department of the Interior determined that petitioner's mining claims were invalid because there was no "discovery of a valuable mineral deposit" as required by the federal mining laws (Pet. Apps. A-C, pp. 1-35). The district court, finding that the Department's

decision was supported by substantial evidence, granted the government's motion for partial summary judgment. The court held that petitioner had no interest in the land in dispute and accordingly a writ of possession was issued to the United States (Pet. App. E, p. 44). The court of appeals affirmed (491 F. 2d 239).

1. Petitioner's primary contention is that 30 U.S.C. 38 removes the requirement of discovery of a valuable mineral deposit where the claimant has been in possession for a period equal to the period of the applicable state statute of limitations. Section 38 provides in relevant part that where claimants "* * * have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto * * *." Petitioner's contention that Section 38 removes the requirement of discovery was rejected by this Court in *Cole* v. *Ralph*, 252 U.S. 286, where it was held that Section 38 is merely a remedial provision designed to substitute proof of holding and working for the prescribed period for proof of acts of location, recording and transfer. This Court expressly held that the discovery requirement is unaffected (252 U.S. at 305-307):

> As respects discovery, the section itself indicates that no change was intended. Its words "have held and worked their claims," presuppose a discovery; for to "work" a mining claim is to do something toward making it productive, such as developing or extracting an ore body after it has been discovered. * * *

As the court of appeals noted, petitioner's "long use of the land has been primarily for purposes of health spa," and while petitioner did gather and distribute certain mud and salt compounds, the court of appeals correctly held that "[t]hese activities cannot by any stretch of the imagination be considered the mining of valuable minerals" (Pet. App. G, p. 52).

2. Petitioner's remaining contentions are also without merit:

a. "Bathing salts" are not locatable minerals under the federal mining laws. The "bathing salts" found on the land which petitioner claims are a compound in which the primary constituent is sodium. As the Department of the Interior found, "[s]odium on the public lands, if disposable, would be subject to lease or permit at the discretion of the Secretary under the Act of February 25, 1920, §§23-25, as amended, 30 U.S.C. §§261-263 (1970)" (Pet. App. B, p. 33).

b. Contrary to petitioner's contention, the burden of proof as to discovery is on the mining claimant. See, *e.g.*, *Foster* v. *Seaton*, 271 F.2d 836 (C.A.D.C.); *Converse* v. *Udall*, 399 F. 2d 616 (C.A. 9), certiorari denied, 393 U.S. 1025.

c. Petitioner's contention that the government is estopped to deny his claim to a portion of the public domain is in effect a claim that public lands can be acquired by adverse possession. It is well settled that estoppel is not a defense to a suit by the government to enforce public rights or protect public interests (*United States Immigration and Naturalization Service* v. *Hibi*, 414 U.S. 5), and this principle is particularly applicable in the administration of public lands. See *Utah Power & Light Co.* v. *United States*, 243 U.S. 389.

In any event, assuming *arguendo* that estoppel could be asserted against the government, in the present case there was no government inaction constituting estoppel (see 478 F. 2d at 45, n. 2).

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.